

### **THIRD AMENDMENT TO LEASE AGREEMENT**

This Third Amendment to Lease Agreement is made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2022, between Longmont WinAir Co., a Delaware Corporation ("Tenant") and the City of Longmont, Colorado, a municipal corporation ("City" or "Landlord") for the purpose of amending that certain Lease Agreement dated March 1, 2004, (the "Lease"), by and between Tenant and City's predecessor in interest, Boston Partnership ("Previous Landlord"), relating to the leasing of a portion of the building located at 1140 Boston Avenue, Unit B, Longmont, Colorado, 80501 and appurtenances thereto (the "Premises"), and for the purpose of modifying the lease duration and rental payment terms contained in the First Amendment to Lease Agreement.

**WHEREAS**, Tenant has continuously occupied the Premises since 2004 pursuant to the Lease attached hereto as Exhibit "A," together with three Extensions of Lease also attached and made part of Exhibit "A;" and

**WHEREAS**, City purchased the Premises from the Previous Landlord in connection with the Resilient St. Vrain Project on or about November 30, 2016, and the Lease and Extensions were assigned to and assumed by the City in connection with the sale; and

**WHEREAS**, upon Tenant's request to extend its tenancy beyond the February 2019 termination date in the Lease assigned to City and the City's determination that such extension was in its best interest, the parties entered a First Amendment to Lease Agreement, attached hereto as Exhibit "B," to extend the lease term to February 28, 2020 and replace certain lease provisions to comport with City contract requirements; and

**WHEREAS**, The First Amendment to Lease, effective February 14, 2019, modified Paragraphs 3 ("Term"), 5 ("Rental"), 13.2 ("Indemnification of Tenant"), 20 ("Security"), and 23 ("Notices"), updated the names of the parties to the Lease to reflect City as Landlord, and added language required by the Colorado Taxpayers' Bill of Rights (TABOR), but otherwise provided that "all other terms and conditions in the Lease are hereby ratified and confirmed and remain in full force and effect;" and

**WHEREAS**, The Second Amendment to Lease, effective February 12, 2020, modified Paragraphs 3 ("Term"), 5 ("Rental"), 13.2 ("Indemnification of Tenant"), 20 ("Security"), and 23 ("Notices"), but otherwise provided that "[a]ll other provisions of the Lease shall remain in full force and effect;" and

**WHEREAS**, the Tenant now requests an additional two-year extension to the lease term, and the City has determined that such extension is in its best interest.

**NOW, THEREFORE**, City and Tenant, in consideration of the mutual promises contained herein, agree to amend the Lease as follows:

1. The parties agree that the new rental Term shall commence March 1, 2022 and shall end on February 29, 2024. This Term shall replace Paragraph 3 of the original Lease as well as Paragraph 1 of the Second Amendment to Lease.

2. The parties agree that the annual rent for the first year of the lease shall be \$113,496.57, payable in installments of \$9,458.05 per month due in advance on the first day of each month, except that the first payment shall be due March 1, 2022. The annual rent for the second year of the lease shall be \$116,901.46, payable in installments of \$9,741.79 per month due in advance on the first day of each month, beginning March 2021, and that Tenant shall pay a late charge equal to five percent of any monthly rental payment not paid within five days of its due date. This Rental term shall replace Paragraph 5 of the Lease and Paragraph 2 of the Second Amendment to Lease.

3. The parties agree that, as specified in the First Amendment to Lease, City shall not indemnify Tenant, notwithstanding the provisions of paragraph 13.2 of the Lease ("Indemnification of Tenant"); the City shall continue to hold a Security Deposit in the amount of \$4,385.00 and that other than this revised sum, the provisions of Paragraph 20 of the Lease ("Security") shall remain unchanged. The parties further agree that all of City's financial obligations under this Third Amendment to Lease are contingent upon appropriation, budgeting, and availability of specific funds to discharge those obligations, and that all references in the Lease to Tenant or to "WinAir" shall be deemed to refer to Longmont WinAir Co., a Delaware Corporation. All references in the Lease to "Landlord" or to "Boston Partnership" shall be deemed to refer to the City of Longmont. All other provisions of the Lease shall remain in full force and effect.

4. The provisions of paragraph 23 of the Lease ("Notices") are amended only insofar as notice to Landlord shall be directed as follows:

City of Longmont, Public Works and Natural Resources Department  
Business Services Division  
1100 S. Sherman Street  
Longmont, CO 80501  
Attn: Karen Chandler

5. Order of Precedence. The provisions of the Lease, as modified herein, shall govern the relationship of Tenant and Landlord. In the event of conflicts or inconsistencies between the Lease, the First Amendment to Lease, and this Second Amendment to Lease, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- a. The provisions of this Third Amendment to Lease;
- b. The provisions of the Second Amendment to Lease;
- c. The provisions of the First Amendment to Lease;
- d. The provisions of the main body of the Lease.

APPROVED AND AGREED TO BY THE CITY OF LONGMONT, COLORADO

\_\_\_\_\_  
MAYOR

CITY OF LONGMONT, COLORADO

APPROVED AS TO FORM:

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PROOFREAD

\_\_\_\_\_  
DATE

APPROVED AS TO FORM AND SUBSTANCE:

\_\_\_\_\_  
ORIGINATING DEPARTMENT

\_\_\_\_\_  
DATE

CA File: 21-001401

STATE OF COLORADO     )  
                                      ) ss.  
COUNTY OF BOULDER    )

I attest that the foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, as the Mayor of the City of Longmont.

Witness my hand and official seal.

\_\_\_\_\_  
CITY CLERK, Notary Public

My commission expires: \_\_\_\_\_

## TENANT'S ACCEPTANCE AND AGREEMENT

Tenant, Longmont WinAir Co., accepts the above Third Amendment to Lease Agreement and agrees to be bound by its terms as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

By: \_\_\_\_\_

Its: \_\_\_\_\_

[illegible]

I attest that the foregoing First Amendment to Lease Agreement was acknowledged before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_  
as \_\_\_\_\_ of Longmont WinAir Co.

Witness my hand and official seal.

Notary Public

My commission expires \_\_\_\_\_